No. 15-233

In the Supreme Court of the United States

COMMONWEALTH OF PUERTO RICO, et al.
Petitioners,

v.

FRANKLIN CALIFORNIA TAX-FREE TRUST, et al.,
Respondents.

ON [redacted] WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

BRIEF OF AMICUS CURIAE GREGORIO IGARTUA IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

Whether the Appeals Court (1st Cir.) can find support to justify the removal of Puerto Rico from the Bankruptcy Code or for repeal of the "PR Recovery Act." depriving the American Citizens of Puerto Rico of Equal Protection under the veil of a "Special Relation With The United States" ?

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INTEREST OF AMICUS CURIAE

Amicus curiae, attorney Gregorio Igartua, is an American citizen resident of Puerto Rico. As an attorney he has been litigating cases in the Federal Courts for over twenty five years dealing with the territorial incorporation of Puerto Rico to the United States, ad honorem. (e.g., *US v Puerto Rico Police Dept. 922 F Supp. 2nd 185*). As an American citizen, he has an interest in promoting solutions to the fiscal problems faced by the Government of Puerto Rico in a manner consonant with the laws and Constitution of the United States of America, that the social, economic, legal and constitutional solutions for Puerto Rico be solved within the proper context of what the political and legal relation of Puerto Rico to the United States really is presently, that of a de facto incorporated U.S. territory where 3.5 million American citizens by birth live, not on what they could hypothetically be.

As an American citizen resident of Puerto Rico, and a practicing attorney with knowledge of the implications of the non-incorporation qualifications by the First Circuit Court to the territory of Puerto Rico, in support of its opinion in this case, he deems it pertinent to file an Amicus Curiae Brief in Opposition to such qualification. (USC Rule 37). The economic crisis of Puerto Rico is too vital an important issue for this Honorable Court to allow this Amicus to go unnoticed and/or unanswered.

In accordance with Supreme Court Rule 37.6, amicus curiae affirms that the position he takes in this brief has not been approved or financed by Petitioners, Respondents, or their counsel. Neither Petitioners, Respondents, nor their counsel had any role in authoring, nor made any monetary contribution to fund the preparation or submission of this brief. Pursuant to Supreme Court Rule 37, amicus curiae states that the parties via their attorneys received timely notice of amicus curiae's intent to file. Petitioners' attorney did not object to

filing of this Brief. Respondents' attorneys did not respond to the notice of filing of the Amicus Brief .

SUMMARY OF ARGUMENT

The principal issue in the Petition for Certiorari presented before this Court is whether the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., preempts Puerto Rico from enacting its own municipal bankruptcy law. (Petitions Nos. 15-233 and 15-255).

Although the Bankruptcy Code excludes Puerto Rico from the safeguards of Chapter 9, and does not allow its municipalities the protection of the Code, the First Circuit found that the Commonwealth's Recovery Act., enacted to fill this void, was nonetheless preempted by the Bankruptcy Code. The Act seeks to provide public utilities an opportunity to restructure public debts that are overwhelming Puerto Rico as a political entity.

It is pertinent to inform the Court that this Amicus does not seek to reiterate legal arguments concerning preemption already well-developed by the Petitioner. The First Circuit decision left Puerto Rico without either federal or territorial debt relief, and rendering it even more powerless to face its fiscal problems but finding support in treating it as a non incorporated territory as if with a special political relation to the United Sates.

Rather than examining the issue exclusively as a matter of preemption, the Amicus takes Hon. Judge Torruella's concurrence in the decision and focuses on the policy implications, and of the First Circuit decision, as related in the opinion to the present legal relation of the territory of Puerto Rico to the United States.

Nonetheless, it is pertinent to inform important facts related to the opinion. Prior to 1984

the Bankruptcy Code allowed Puerto Rico as all states to authorize Puerto Rico's municipalities, including its public utilities, to restructure its debts under Chapter 9 of the Code. See 11 U.S.C. § 101(40). In 1984, Congress amended the Code. In so doing, Congress —inserted a change in the definition of State that ended excluding Puerto Rico as an entity "who may be a debtor" under Chapter 9 of the Code. As a result of this amendment, Puerto Rico's municipalities and public corporations lost the right to restructure their debts under the Code. Puerto Rico does not have available federal or territorial regulatory mechanisms for restructuring the debt of its public corporations. Hon. Judge Jose Torruella concurred in the opinion but argued that the 1984 amendments excluding Puerto Rico from even treatment under the Code do not meet rational scrutiny under the Equal Protection Clause. (See: *Trailer Marine Transp. Corp. v. Rivera Vázquez*, 977 F.2d 1, 9 (lst Cir. 1992): "Puerto Rico has been integrated wholly into the United States economic system in a manner like states within a federalist structure). (U.S. Const. Art. I Section 8).

Amicus proposes to this Hon. Court that the bankruptcy policy at issue in the case, and/or any remedy used by this Court in response to the request by Petitioners due to the economic crisis invoked, must be disposed judicially considering the constitutional relation of Puerto Rico to the U.S. based on what we are, 4th, 5th, and 6th generation American citizens by birth, not on what the 3.5 million American citizens who live in Puerto Rico can hypothetically be, as the Appeals Court did. Amicus Curiae proposes that this Hon. Court evaluate the petition within this context, and that it will revoke the decision of the First Circuit, a decision which does not meet constitutional scrutiny.

I- ARGUMENT

PUERTO RICO'S RELATION TO THE UNITED STATES IS THAT OF A TERRITORY GRADUALLY INCORPORATED TO BE "LIKE A STATE" FOR WHICH REMOVAL FROM THE BANKRUPTCY CODE OR REPEAL OF THE "PR RECOVERY ACT" UNDER THE VEIL OF ANOTHER SPECIAL RELATION OR UNINCORPORATION DISCRIMINATORILY DEPRIVES THE AMERICAN CITIZENS OF PUERTO RICO OF EQUAL PROTECTION RIGHTS

Puerto Rico has a population of 3.5 million American citizens. It is suffering from its worst economic depression since it was acquired by the United States in 1898. The outstanding debt is in an amount over $72 billion dollars. As a result, almost five million citizens formerly residents of Puerto Rico have moved residence to the fifty states, where they enjoy full rights as American Citizens. The residents of Puerto Rico do not have government by the consent of the governed. They cannot vote in Presidential Elections, nor can they vote for five representatives and two Senators to Congress. Therefore, they don't have any power to vote for or against the federal laws which they must obey, such as the change made to the Bankruptcy code in 1984. This case constitutes clear evidence of another unequal and discriminatory treatment by the Federal Government towards Puerto Rico.

The appearing party qualifies the pattern of activity of unequal conduct of the three branches of the U.S. Government as not acceptable within the U.S. constitutional framework. Thus, it seeks

through this Brief constitutional equal protection for the American citizens residing in Puerto Rico, (US Const. Amend. XIV) within the issue of the US Bankruptcy laws applicable to all state governments, and in consequence to their American citizens residents of these. Since the Government is the People, the People are the American citizens. The U.S. Constitution and federal laws apply in Puerto Rico as if it is a state. Notwithstanding, and in contradiction, the First Circuit Court of Appeals related and justified its opinion by stating that Puerto Rico is a non-incorporated territory, ..."a territory with a "special relation" to the U.S.... (Op. pgs.# 30, 31 and 42), citing *Harris v Rosario*, 446 US 651-52 (1980). Such a statement is incorrect, discriminatory, and has serious legal, political, economic and social consequences for the American citizens residents of Puerto Rico, and needs to be opposed. It misinterprets what the relation between Puerto Rico and United States really is. Moreover, as will be shown, the Harris case was decided on factors not legally applicable today. The Harris case was used by the Appeals Court as supportive to justify a discriminatory treatment to Puerto Rico with relation to the bankruptcy at issue in the case.

This Brief is submitted in opposition to the non-incorporation statement by the Appeals Court in its opinion to propose respectfully to this Hon. Court that it clarify the legal status of Puerto Rico as that of one gradually incorporated by Congress since 1898, and in support of the fact that, in the year 2016 Puerto Rico is a de facto incorporated territory in transit to statehood. Moreover, one that has a federalist relation as States do, since its constitution was adopted in 1952.

The Appearing Party considers that this Honorable Supreme Court responsibly should dispose judicially of this complaint by once and for all

making a determination of the issue of incorporation or non-incorporation of Puerto Rico, to avoid more discriminatory legal practices against the American citizens who live in Puerto Rico It is proposed in this Brief that there is sufficient evidence for this Court to declare that Puerto Rico in the year 2016 is an incorporated territory of the United States where the U.S. Constitution applies. The denial of the Bankruptcy Act to Puerto Rico, in contrast to its applicability to the 50 states, discriminatorily denies "equal protection" rights to its 3.5 American citizens.

Considering the special political relations that the Appeals Court said Puerto Rico has with the United Sates, the controversy at issue in this case before this Hon. Court within its proper legal context, is then as follows: Does the Federal Government can continue to "switch on and off" the applicability of the US Constitution to Puerto Rico, a United States territory? Within this context, should Puerto Rico be considered in 2016 an incorporated territory of the United States, considering the gradual legal, economic, political and social integration to the United States since the year 1898?

I A) THE UNITED STATES HAS GRADUALLY INCORPORATED PUERTO RICO TO BE "LIKE A STATE."

I A 1) US TERRITORIAL POLICY ACQUIRED TERRITORIES BEFORE 1898

Since the adoption of the US Constitution it is Congress, not the Federal Courts who has the authority to dispose of territories. US Constitution Art. IV Paragraph 3 Clause 2 (Territorial Clause)

states as follows:

> ...."Congress is empowered to make all needful Rules and Regulations respecting the Territory belonging to the United States..."

Within this authority in 1787 Congress adopted the Northwest Ordinance, which established the requirements for territories north of the Ohio River to become states. These included: a geographical area, a minimum population, an organized republican form of government, and a territorial delegate to Congress (Now Resident Commissioner for Puerto Rico). Thus, the Ordinance set the National policy that was expected for territories to become States once they met the requirements as set forth in the Ordinance.

That territories were acquired before 1900 to be admitted as states can be evidenced also by judicial opinions. For example: in *Holden v. Hardy*, 169 U.S. 366, the Court said:

> "...The territories acquired by Congress, whether by deed of cession from the original states, or by treaty with a foreign country, are held with the object, as soon as their population and condition justify it, of being admitted into the union as states, upon an equal, footing with the original states in all respects...."

> "...In the future growth of the nation, as heretofore, it is not impossible that Congress may see fit to Annex territories whose jurisprudence is that of the Civil law. One of the considerations moving to such annexation might be the very fact

that the territory so annexed should enter the Union with its tradition, laws and systems of administration unchanged..."

I A 2) US ACQUIRES PUERTO RICO IN 1898

Puerto Rico was in 1898 an overseas province of Spain. (Constitution of the Spanish Monarchy, June 30, 1876 Article 89). Over the years it had sent over 100 delegates to the Spanish Parliament. By the Treaty of Paris Spain ceded Puerto Rico to the United States in 1898 (Art.II Treaty of Paris- 30 Stat. 1754). The Treaty granted Congress full powers over Puerto Rico. Article IX of the Treaty specifically provided: "...The civil rights and political status of the native inhabitants of the territories hereby ceded to the United States shall be determined by Congress....". Within this original legal source of authority, Congress started a local process of gradual incorporation over the years adopting legislation to organize the government of Puerto Rico to be compatible with its federalist structure, like states are to the federal government. In fact, as will be shown, Puerto Rico has been legally incorporated to be "like a state" gradually to the same (or more) extent as any other territory before becoming a state, or as the territories that were incorporated in transit to statehood under the Northwest Ordinance.

I A 3) US TERRITORIAL POLICY AFTER 1898 INCORPORATED AND NON INCORPORATED TERRITORIES

INSULAR CASES OF 1901

In the year 1901 the Supreme Court decided the Insular Cases changing U.S. Territorial policy by judicial interpretation. The Court said territories

could be acquired by the United States to be incorporated to be states or to be kept temporarily as non-incorporated until Congress determined that their residents could be considered part of the "American Family", proper to incorporate them. Three opinions qualifying Puerto Rico as a non-incorporated territory are cited below:

I A 3 (a) ***DOWNES V. BIDWELL 182 US 244; 1901***

> In the Downes case of 1901, as in other cases similarly decided by the US Supreme Court and known as the Insular Cases, the Court said:
> ". . . .Incorporation into the United States of territory acquired by treaty of cession, in which there are conditions against the incorporation of the territory until Congress provides there for, will not take place until in the wisdom of Congress it is deemed that the acquired territory has reached that state where it is proper that It should enter into and form a part of the American family.....
>
> If those possessions are inhabited by alien races, differencing from us in religion, customs, laws, methods of taxation, and modes of thought, the administration of government and. justice, according to Anglo-Saxon principles, may for a time be impossible ...."

I A 3(b) ***BALZAC V. PUERTO RICO 258 US 298, 1922***

In this case the application of the Constitution

was determined by the locality of the person, not the person's citizenship.

"... As previously stated, under the Insular Cases doctrine only fundamental constitutional rights extend to unincorporated United States territories, whereas in incorporated territories all constitutional provisions are in force.

I A 3 (c) HARRIS V. ROSARIO (446 US 651, 1980).

Harris v. Rosario is another judicial decision decided under the veil of the Insular Cases doctrine affecting Puerto Rico adversely. It was decided under wrong and incorrect legal bases. This case questioned the validity of policy under which Puerto Rico received less assistance than do states in programs of assistance for Aid to Families with Dependent Children. The Court held that there was a rational ground for the statutory classification since:

1) Puerto Ricos' residents do not contribute to the Federal Treasury. (Incorrect. See US Tax Code Section 933).

2) the cost of treating Puerto Rico as a state for purposes of AFDC assistance would be high, (Incorrect).

3) granting greater AFDC benefits could disrupt the Puerto Rican economy. (paraphrasing Justice Thurgood Marshall's dissent, those programs designed to help those who need them the most should not be extended to Puerto Rico's poor out of concern that if extended they would disrupt the local economy).

The three cases cited above are important and pertinent to this case. The criteria the courts adopted to define what is a non-incorporated territory (in reference to Puerto Rico) is as a consequence the

legal source the Appeals Court used as supportive in its opinion to deny applicability of Chapter 9 the Bankruptcy Act. to Puerto Rico.

In consequence, it can be concluded that, within the context of the cases referred above, the US Appeals Court 1st Cir. justified its opinion by stating expressly or by implication that:

1) Puerto Rico is a non-incorporated territory of the United States.
2) The 4th , 5th and 6th generation American citizens of Puerto Rico are not part of the "American Family" in the year 2015, and will only be apt when Congress determines.
3) Puerto is a territory belonging to the United States, but not a part of the United States
4) Only fundamental constitutional rights extend to the American citizens residing in Puerto Rico, notwithstanding congressional and judicial dispositions to the contrary
5) The American citizens of Puerto Rico don't pay Federal taxes. (Incorrect U.S. Tax Code 933.)
6) The cost of treating Puerto Rico like a state, like an incorporated territory, would be big for purposes of this case. (Incorporated with parity in federal funds like states).
7) Granting greater benefits to Puerto Rico like to states (including for purposes of this case) would disrupt the Puerto Rico economy, as if it were not disrupted already.
8) The blessings of a free government under the Constitution cannot still be extended to the American citizens of Puerto Rico.
9) Puerto Rico is still inhabited by an alien race, by aborigines.

How discriminatory and incorrect is the non-incorporated treatment given to Puerto Rico by the Appeals Court in this case will be shown in this Brief. Should this Honorable Court dispose of this case under such discriminatory premises? Can such discriminatory treatment be applied to all future judicial disposition concerning Puerto Rico? Before considering the incorporation process of Puerto Rico it is pertinent to consider that the cases were decided with dissident opinions which evidence that from the outset the majority confronted opposition, as shown below.

I A 4 COMMENTS IN OPPOSITION TO THE INSULAR CASES- *DOWNES V. BIDWELL*, 182 US 1088

This case was decided with a split vote (5-4) by the Court. Hon. Judge Harlan wrote a dissenting opinion which may be quoted in part as follows: (Id., at 1140)

Mr. Justice Harlan, dissenting:

> "....The idea that this country may acquire territories anywhere upon the earth, by conquest or treaty, and hold them as mere colonies or provinces,-the people inhabiting them to enjoy only such rights as Congress chooses to accord to them is wholly inconsistent with the spirit and genius as well as with the words, of the Constitution..."
>
> I reject altogether the theory that Congress, in its discretion, can exclude the Constitution from a domestic territory of the United Sates acquired, and which could only have been

acquired, in virtue of the Constitution...."

COMMENTS AGAINST THE BALZAC DECISION

The Court refused to acknowledge that American citizenship granted in 1917, the presence of a U.S. Federal District Court in San Juan, military service, "Extension of revenue and laws, navigation, and immigration" and the use of U.S. stamps were de jure and de facto acts of incorporation. (Compare to *U.S. v Rasmussen*).

COMMENTS IN OPPOSITION TO THE HARRIS V ROSARIO DECISION

The Harris case was decided on wrong premises and as set forth below:

First, it is incorrect to say (as in Harris) that the American residents of Puerto Rico do not contribute to the Federal Treasury, they do. Today, the American citizens residents of Puerto Rico pay more than three billions dollars annually to the US Treasury in taxes from different sources, as required by the Federal Income Tax Law, but with a discriminatory applicability to Puerto Rico with unequal transfer of payments in Federal Funds.

Moreover, nowhere in the U.S. Constitution is a non-incorporated or incorporated territory defined, nor even referred to. The opinion of the Appeals Court pretends discriminatorily that this Federal Court in 2016 decide the rights of the American Citizens of Puerto Rico for purposes of Chapter 9 of the Bankruptcy code on false information incorrectly qualifying Puerto Rico as a non-incorporated territory, as the Court did in this Harris case. (Id.)

I (B) The legal incorporation process for Puerto Rico

by Congress, the Federal Courts and the executive Branch fits into the U. S. Constitutional framework. Consider the de facto territorial incorporation process of Puerto Rico since 1898 as evidenced below:

I B (1) STATEMENT OF GENERAL MILES—1898

On July 28, 1898, three days after the landing of American troops at Guánica, Puerto Rico, General Nelson A. Miles, who commanded the expeditionary force, proclaimed:

" ... In the prosecution of war against the kingdom of Spain by the people of the United States, in the cause of liberty, justice and humanity, its military forces have come to occupy the island of Puerto Rico. They come bearing the banner of freedom inspired by noble purposes.....

They bring you the fostering arms of a free people, whose greatest power is justice and humanity to all living within their fold....

They have come not to make war on the people of the country, who for centuries have been oppressed; but, on the contrary, to bring protection, not only to yourselves, but to your property, promote your prosperity and bestow the immunities and blessings of our enlightenment and liberal institutions and government...."

I B (2) OATH OF LOYALTY BY P.R. GOVT. OFFICIALS 1898

Since 1898 all the Puerto Rico Civil Government officials have been required to subscribe the following document:

..."And, I also swear, that I will support with and defend the United States Constitution against all enemies, exterior or interior; I will accept it with loyalty and submission and that I make this

commitment freely and without reserve or purpose to evade it"....

I B (3) THE HENRY CARROL REPORT / EXECUTIVE ORDER 1899

President William McKinley sent a commission headed by Henry K. Carroll to Puerto Rico to study all aspects of the Island in 1899. The commission studied government, commerce. industries, productions, roads, tariff and currency. The commissioners held hearings in many towns. The report was submitted to President McKinley on October 6, 1899. Some of the recommendations were:

> 1. "That the Constitution and laws of the United States be extended to Porto Rico; that all citizens.....be declared citizens of the United States.....
> 2. "That a Territorial form of government, similar to that established for Oklahoma, be provided for Porto Rico.....
> 3. "That the legislative power shall extend to all rightful subjects of legislation consistent with the Constitution of the United States.....
> Practically all recommendations were ratified by Congress.

I B (4) 1900- FORAKER ACT.

Shortly after the Treaty of Paris was ratified, the Foraker Act, being the Act of April 12, 1900, (31 Stat. 77), became law. This legislation established a civil government for Puerto Rico, including

provisions for courts, and it extended the statutory laws of the United States not locally inapplicable. The President was authorized to appoint, with the consent of the Senate, the Governor of Puerto Rico, and its chief executive officers, the justices of the Supreme Court of Puerto Rico, and the judges of the local United States District Court.

I B (5) JONES ACT. -1917- AMERICAN CITIZENSHIP

In 1917 Congress adopted the Organic Act, also known as the Jones Act. This legislation: accorded the Federal District Court jurisdiction over all cases cognizable in the district courts of the United States; generally granted Puerto Rico citizens United States citizenship, and codified a bill of rights which remained in effect until 1952 with nearly all of the personal guarantees found in the United States Constitution. The provision was continued concerning the applicability of the statutory laws of the United States to Puerto Rico.

In relation to American citizenship for the people of Puerto Rico Congress also legislated in 1951 so that: all persons born in Puerto Rico on or after April 11 1899, and before January 13, 1941 in the jurisdiction of the United States, who subject to the jurisdiction of the United States, who resided on January 13, 1941 in Puerto Rico or other territory over which the United States had jurisdiction under any other statute, were citizens of the United States as of January 13, 1941. All persons born in Puerto Rico on or after January 13, 1941, and subject to the jurisdiction of the United States, become citizens of the United States at birth. (UDCS 1402). (See *Afroyim v. Rusk*. 387 US. 253, at 268 (1967); *Santori v. US* 30 F 3' 126; and, *Lozada Colon v. US Dept.. of State,* #97-1831, US District, DC, 4/23/1998). Thus,

by granting American citizenship by birth to the residents of Puerto Rico, these became part of the national federalist cooperative affair, in which the citizens became part of the country. (Part of the "American Family") (Id. Afroyim). (See also, U.S. *v Lucienne D' Hotelle De Rexach*, 558 F2d 37 (1977).

I B (6) 1947 – US Const. Art. IV Section 2

In 1947 Congress granted to Puerto Rico the applicability of the "same privileges and immunities "clause (US Const. Art. IV- Section 2.1). (64 Stat. 319 ch. 444, Art.4). Consider this Court considered Alaska in 1905 an incorporated U.S. Territory because this clause was extended and because its Federal Court was assigned to the 9th Circuit Court of Appeals without having a constitution for the then territory. (*Rasmussen v U.S. 197 US 516*).

I B (7) 1948 RIGHT TO ELECT A GOVERNOR

In 1947 Congress granted the qualified voters of Puerto Rico for the first time the right to elect their own governor by popular suffrage. (Act of Aug. 5, 147, c 490, 61 Stat. 770).

I B (8) RIGHT TO ADOPT A CONSTITUTION AS IN STATES

In 1952 Congress enacted the Puerto Rican Federal Relations Act, (64 Stat. 319). (Also referred to as Law 600). One important disposition of the "Law" was that, within the jurisdictional territorial boundaries, the People of Puerto Rico were authorized to adopt their own constitution. Like those of the different "states" of the Union, it provided for a republican form of government, and

was adopted with the consent of the people of Puerto Rico subject to the approval of the US Congress. which it did subject to the condition that any amendment or revision be consistent with the applicable provisions of the Constitution of the United States. (66 Stat. 327). It was stated in Congress that "... as regards local matters, the sphere of action and the methods of government bear a resemblance to that of any State of the Union.." (S Rep. No. 1270, 82 d Cong, 2d Sess, 6 1952). (Compare with, Art. IV - Section 4 - US Constitution).

The Preamble reads in pertinent part as follows:

> ...."We, the People of Puerto Rico, in order to organize ourselves politically on a fully democratic basis, do ordain and establish this Constitution for the commonwealth which in the exercise of our natural rights, we now create within our union with the United States of America. In so doing, we declare:...
> ....The democratic system is fundamental to the life of the Puerto Rican community...
> ....We understand that the democratic system of government is one in which the will of the people is the source of public power, the political order is subordinate to the rights of man, and the free participation of the citizen in collective decisions is assured...
> ....We consider as determining factors in our life our citizenship of the United States of America and our aspiration continually to enrich our democratic heritage in the individual and

collective enjoyment of its rights and privileges; our loyalty to the principles of the Federal Constitution...."

The union with the United States was considered as irrevocable. (Proclamation #10, July 25, 1952, Creation of the Commonwealth of Puerto Rico).

In Art. VII-3 of the Constitution the federalist relation of Puerto Rico with the Federal Government under the "Supremacy Clause, like states have, was accepted by the People of Puerto Rico. The approval of the Constitution to organize a local government (like for "states"), with the requirement that it, or any amendment or revision, be consistent with the applicable provisions of the Constitution of the United States, particularly with its Preamble;
- by the free and voluntary direct vote of the American citizens residents of Puerto Rico,
- its free and voluntary transmittal to Congress by the President of the United States,
- and, the free and voluntary ratification by direct vote of the members of the Congress, was a democratic process carried under the veil of US Constitutional requirements. It was a democratic commitment carried on with the mutual consent of the People of the United States and by the People of Puerto Rico, all American citizens, by American citizens and for American citizens (Compare with U.S. Const. Art. IV - 4). It was a democratic commitment by the United States to the People of Puerto Rico, and the legal basis to support incorporation of Puerto Rico to the US has to be considered as supported by that commitment.

The autonomy granted to Puerto Rico with the adoption of the Constitution was to rule its internal affairs like states do, in a federalist relation where the Federal Government has supremacy over the

sovereignty of the territory as over that of the states.

Within its is context it is also pertinent to be considered by this Court, how the process has been legally interpreted.

Of particular interest:

> --- House Majority Leader John McCormick in approving the P.R. Constitution stated: "... it is a new experiment turning away from territorial status ... it is between the territorial status and statehood, 98 Cong. Rec. 5728 (1952 c).
>
> --- "....the procedure provided in "Law 600 was carried out. "As to substance Law 600 does not differ at all from the enabling acts passed in the procedure for admission into the Union of new states..." Rafael Hernandez Colon, The Commonwealth of Puerto Rico: Territory or State. P.R. Bar Journal 207, at 239 (1959). (Honorable Rafael Hernandez Colon is a former Secretary of Justice of Puerto Rico, 1966; also, an Ex-Governor of Puerto Rico) (1972-1976, 1984-1992). (See also. G. Igartua. Muñoz El Americano 2005).

As a result of the procedure "of Law 600" the Puerto Rico government was presently and permanently restricted by federal law and federal principles. (*Hernandez Agosto v. Romero Barceló* 594 FS 1390). Evidently this includes democratic and human rights principles, (Id. 48 USCA 731 (b)). (See also, *Consentino V. International Longshoremen Assn. et. Als.* 126 FS 420); Examining *Board v. Flores*

426 US 572 (1976)). (See *Hon. .Judge Gustavo A Gelpi* "Mensaje en Ocasión de los Actos Conmemorativos del Quinquagesimo Aniversario. La Constitución del Estado Libre Asociado. (July 25,2002)" Congress accorded Puerto Rico the degree of autonomy and independence associated with States of the Union. (*US v Cirino* 419 F.3d 1001 1004 (9th Cir. 2005; U.S. v. Quiñones 758 F.2d 40, 42 (1st Cir. 1985).

I B (9) ACTS OF INCORPORATION OF PUERTO RICO BY THE FEDERAL JUDICIAL BRANCH

With respect to the Federal Judicial Branch in Puerto Rico, the Federal District Court of Puerto Rico is included as a judicial district of the United States; and in matters of jurisdiction, powers, and procedures, it is in all respects equal to other United States District Courts. Rules of Federal criminal and civil procedure are applicable. Diversity jurisdiction of American citizens residents in states and of those residing in Puerto Rico apply in the local Federal District Court as in states. (Compare with Art. III U.S. Const.). (See also: "...the Puerto Rico courts provide an "adequate state forum" for the adjudication of federal constitutional claims...." *Coors Brewing Company v. Mendez –Torres, Secretary of the Treasury of P.R.*, No. 11-1559- 1st Circuit April 27, 2012).

FEDERAL JUDICIAL OPINIONS OF CONSTITUTIONAL APPLICABILITY TO PUERTO RICO

>> Art.1 Sect. 8.c Sea-Land Services. Inc. v Municipality of San Juan, 505 F. Supp. 533) (D.P.R. 1980).

>> Art. I Sect. 10 Buscaglia v. Ballester, 162 F 2d 805 (1st Cir. 1947), cert. denied. 336 U.S. 816 (1947).

>> Art. IV U.S. Const. Sect. 1, Americana of Puerto Rico v. Kaplus, 368 F. 2d 431 (3d Cir. 1966). See also 28 U. S.C. 1738 (1988).

>> U.S. Const. Amendment 1, Balzac v People of Porto Rico, 258 U.S. 298, 314 (1922), implies that the First Amendment applies to Puerto Rico.

>> U.S. Const. Amendment 4, Torres v. Puerto Rico, 442 U.S. 465 (1979).

>> U.S. Const. Amendment 8, Feliciano v. Barcelo, 497 F. Supp. 14, 33 (D.P.R. 1979)

>> U.S. Const. Amendment 11, Fernandez v. Chardon, 681 F. 2d 42 (1st Cir.1982).

>> US Const. Amendment XI Ezratty v Puerto Rico, 648 F 2"' 770, (1981) - The principles of the Eleventh Amendment which protect a state from suit without its consent, are fully applicable to the Commonwealth of Puerto Rico.

>> U.S. Const. Amendment XIV, Examining Board v. Flores de Otero, 426
U.S. 572,599-601 (1976).

>> Dormant Clause applies in Puerto Rico - Trailer Marine Transport v. Rivera 977 F2d 1. (U.S. Const. Art. 1 Section 8).

>> *U.S. Const. Amendment XIV, Rodriguez V. Popular Democratic Party, 457 U.S. 1. 7-8 (1982).*

JUDICIAL OPINIONS OF PARTICULAR IMPORTANCE TO THE INCORPORATION PROCESS

— *U.S. v Laboy – 553 F3d 715 (2011),* In this case the U.S. Dept. of Justice argued for the applicability of constitutional provisions. The Court said: ".... These arguments demonstrate only that Puerto Rican sovereignty is of an extent and character similar to that of States...." Congress incorporation of Puerto Rican connections is *unambiguous* (Supreme Court Judge Sandra Day O'Connor).

— *Consejo de Salud Playa de Ponce v Rullan* – 586 FS 2nd (2008) (Hon. Judge Gustavo Gelpi) holding Puerto Rico is an incorporated territory of the United States.

> "....The court, rather today holds that in the particular case of Puerto Rico, a monumental constitutional evolution based on continued and repeated congressional annexation has taken place. Given the same, the territory has evolved from an unincorporated to an incorporated one. Congress today, thus, must afford Puerto Rico and the 4,000,000 United States citizens residing therein all constitutional guarantees. **To hold otherwise, would amount to the court blindfolding itself to continue permitting Congress *per secula seculorum* to switch on and off the Constitution....**"

— *U.S. Puerto Rico Pólice Dept. 922 F Supp. 2nd 185, (2013).*

In said case the U.S. Dept. of Justice argued at ensuring that the U.S. Constitution is applied in Puerto Rico to all American Citizens, and even to illegal aliens. There the U.S. Department of Justice argued as follows:

> **-Pleading # 7:** This action is brought to enforce the First, Fourth, and Fourteenth Amendments to the United States Constitution, and the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. § 14141.

The case was settled by mutual agreement and the Government of Puerto Rico was forced to pay a penalty of $100 million over a 10 year period to ensure the P.R. Police Department would guarantee the security of the American citizens in Puerto Rico under the First, Fourth and Fourteenth amendments to the U.S. Constitution.

— *US v Mercado Flores* (No. 14-466, June 6, 2015, GAG, DPR).

"... Puerto Rico is no longer a mere unincorporated territory of the United States..." "...Puerto Rico is a U.S. Territory which is between being incorporated and being a state, it is a commonwealth...."

--- *US v. Rivera Hernández, PRFDC – CRIM NO. 15-00361 (12-18-2015)*

P.R. is indeed a state for purposes of the Sherman Antitrust Act., as argued by the U.S. Dept., of Justice.

NOTE: The arguments of the U.S. Dept. of Justice in the above mentioned cases are in direct opposition to the arguments of the U.S. Dept. of Justice as Amicus Curiae in the case of Commonwealth of P.R. v. Sanchez Valle, Petition of Certiorari # 15-108, now pending before this Hon. Supreme Court.

I B (10) FEDERAL LAWS APPLY IN PUERTO RICO (39 STAT 954- LAW 600 SECTION 9)

Congress disposed that the laws of the United States, which are not locally inapplicable, apply in Puerto Rico with the same effect and to the same extent and validity as in the Unites States.

I B (11) U.S. AGENCIES TREAT PR AS A STATE

All U. S. Agencies and /or subdivisions of the Executive Branch treat Puerto Rico similarly as a "State", and many have offices in Puerto Rico.

I B (12) FEDERAL TAXES PAID FROM PUERTO RICO

Most Federal internal revenue laws are applicable within the jurisdiction of Puerto Rico as if Puerto Rico were a state, to the extent that in certain categories more taxes are paid to the Federal Treasury than from some states. The Internal Revenue Service operates various offices in different regions within Puerto Rico, and US Customs service

also operates in Puerto Rico.

1. In 2014 the residents of Puerto Rico contributed more than three billion dollars to the U.S. Treasury, contributed more to the U.S. Treasury in Social Security (FICA) taxes than Employees and Employers in some states, contributed more to the U.S. Treasury in Unemployment Insurance taxes than more than the residents of 15 states. (IRS 2014 Highlights).

Reviving the rationale of Harris v Rosario in 2015 in support of a First Circuit Court decision on the false premise that residents of Puerto Rico do not contribute to the U.S. Treasury is simply wrong .

I B (13) FEDERAL ELECTORAL PROCESS IN PUERTO RICO

The American citizens residing in Puerto Rico have been sending voting delegates to the quadrennial conventions of both main political parties for over 50 years. Presidential primaries have been held in Puerto Rico over the past 35 years.

I B (14) PARTICIPATION IN WORLD WARS BY AMERICAN CITIZENS RESIDENTS OF PUERTO RICO

Thousands of American citizens residents of Puerto Rico have defended democracy and the Nation in military conflicts in which the Nation has been involved since 1917.

"[T]he Puerto Rico of the present, one which Congress pursuant to Article IX of the Treaty of Paris in 1898, and pursuant to the territorial clause

(US Const Art IV), has assimilated gradually over the years in the very image and likeness of the United States system of government and laws, and in which an Article III Federal Court sits.

CONCLUSION

As it can be seen, the criteria adopted by the Federal Appeals Court in the case of *Harris v Rosario* to use it in support of deciding that Puerto Rico has a special relation with the U.S. of a non-incorporated territory is today legally unfounded and incorrect. The practice of treating Puerto Rico as a territory in some cases and incorporated for others must end. This discriminatory treatment has provoked legal, social, political, and economic problems for Puerto Rico.

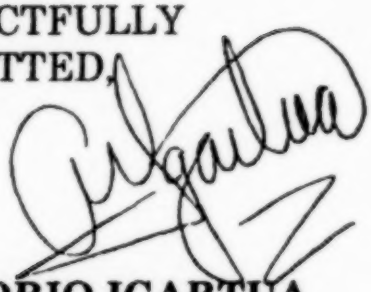
The uncertainty of whether the U.S. Constitution applies in Puerto Rico on a case by case basis allows and leads to an arbitrary, capricious, unequal and discriminatory treatment by each of the three Branches of the Federal Government against its own American Citizens, those residing in Puerto Rico.

For purposes of this case, where is the discriminatory treatment towards Puerto Rico as if it is a non-incorporated territory? It consists in denying an alternative provided to all states for bankruptcy proceedings. Puerto Rico has been left defenseless against its creditors, like no other United States jurisdiction. The Appeals Court proposal that Puerto Rico can recur to Congress for assistance is an exercise in futility. The American citizens who reside in Puerto Rico do not have the political power in Congress to restrain discriminatory actions on the part of the U.S. Government, as residents of states do. Within this context, it is pertinent for the Court to consider how the free democratic will of the

American citizens residents of Puerto Rico has been ignored by the Federal Government. Consider that a majority of the citizens (61.13%) voted for statehood in 2012. (PR 2012 Status Plebiscite Law).

In 2016 the ties between the United States and Puerto Rico have strengthened in such a way, and in such a constitutional significance, that it is definitely an incorporated territory. The evidence cited in this brief should move this Honorable Court, in justice to the 3.5 million American Citizens residents of Puerto Rico, to declare Puerto Rico an incorporated territory of the United States. It was this Hon. Court which undid *Plessy v. Ferguson* by deciding *Brown v Board of Education* in 1954. The Insular Cases declared Puerto Rico an unincorporated territory. It is this Hon. Court which has the power to undo those fateful decisions by declaring Puerto Rico an incorporated territory in 2016. This Declaratory Judgment will eliminate once and for all the discriminatory and arbitrary excuses provided by some US Government Officials, and/or for Federal courts to continue discriminatorily switching "on and off" U.S. constitutional applicability as in the opinion of the Appeals Court in this case. Moreover, the Appeals Court by denying the applicability of chapter 9 of the Bankruptcy Code to Puerto Rico has denied the equal protection of the laws to the loyal American citizens of Puerto Rico. In consequence the opinion of the Appeals Court should be revoked.

RESPECTFULLY
SUBMITTED,



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